

**GRANT COUNTY
DEPARTMENT OF HEARING EXAMINER**

BEFORE THE GRANT COUNTY HEARING EXAMINER

IN THE MATTER OF:

Michael and Carolyn Tierney
Appeal of Administrative Decision

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**HEARING EXAMINER'S DECISION ON
ADMINISTRATIVE APPEAL**

This matter came on before the Hearing Examiner for a closed record public hearing on February 10, 2016 related to an Appeal filed by Michael and Carolyn Tierney of an approval of a Shoreline Development Permit Exemption issued to Grant County Public Utility District #2 on October 20, 2015.

I. PRELIMINARY MATTERS

The Hearing Examiner determined that this appeal hearing was to be a closed record appeal based upon the rules and regulations as set forth in the Grant County Unified Development Code. The record of this appeal includes all documents in the Grant County Planning Department file of record including Appellant's motion for an open record hearing. However, the Hearing Examiner does not admit into the record the Declaration of Michael Tierney dated February 9, 2016.

II. BASIC FINDINGS

The basic background facts are as follows:

- 2.1 As a result of the drawdown of the Columbia River in the vicinity of the Appellant's property, the Appellants began experiencing sand blowing from the exposed riverbed onto the Appellant's property. This blowing sand continued after the river level was raised to its normal level.
- 2.2 To remedy this situation, the Appellant planted vegetation on the sand that remained after the water level of the Columbia River was raised to its normal level. Nevertheless, the sand blowing onto the Appellant's property continued to create an accumulation of sand.
- 2.3 The Appellants attempted to control the blowing of the sand by planting grasses over the property, including property owned by Grant County PUD #2. This act was done by Appellants without obtaining an appropriate permit or exemption for work in the shoreline area.

III. CERTIFICATE OF EXEMPTION HISTORY

- 3.1 On or about August 17, 2015, a complaint was filed with the Grant County Planning Department alleging "unauthorized land clearing and planting on PUD property adjacent to 1166 River Drive." This complaint was filed by the Grant County PUD.

- 3.2 After conducting a site visit on August 20, 2015, staff determined that work had occurred within 200 feet of the ordinary high watermark of the Columbia River. The Grant County Planning Departments Code Enforcement Officer issued a "Warning Notice" to the property owner, the Grant County PUD, as well as to the property owner that had allegedly completed the work or caused the work to be completed, the Appellants Michael and Carolyn Tierney.
- 3.3 On October 14, 2015 the Grant County PUD filed a Joint Aquatic Resource Permit Application (JARPA) for restoration work.
- 3.4 The original Certificate of Exemption was issued on October 20, 2015 regarding scope of work specifically identified within the certificate.
- 3.5 This original Certificate of Exemption was withdrawn and was reissued on November 4, 2015 to correct a notice error within the original exemption.
- 3.6 The Appellants timely filed an appeal of the issuance of the Certificate of Exemption on November 17, 2015.

IV. ISSUE TO BE DECIDED

- 4.1 Was the Certificate of Exemption properly issued according to the Grant County Shoreline Master Program and the Shoreline Management Act?
 - 4.1.1 Short Answer: YES

V. DISCUSSION

- 5.1 The appeal argues that the Certificate of Exemption should not have been issued because it permits actions by the Grant County PUD that may:
 - 5.1.1 Create a public nuisance under RCW 7.48.120, RCW 7.48.130 and Grant County Code (GCC) 23.08.290(e)(6) and GCC 23.08.377(e)(7).
 - 5.1.2 Create a common law nuisance.
 - 5.1.3 Result in inverse condemnation of the appellant's property rights.
 - 5.1.4 Result in trespass of sand, dust, soil and other materials on the appellant's real and personal property.
- 5.2 The revised Certificate of Exemption dated November 4, 2015 states that the project cost was approximately \$4,500.00.
- 5.3 The cost of the project covered by the Certificate of Exemption is not disputed by the Appellant.
- 5.4 The Grant County Shoreline Master Program, 24.12.740 sets forth when letters of exemption may be issued by the County. GCSMP 24.12.740(d)(I) allows for an exemption to be issued if the cost of the project does not exceed \$6,416.00.

- 5.5 Further, the JARPA application submitted by the Grant County PUD on October 14, 2015 states that the project has a Categorical Exemption from SEPA under the category of "repair, remodeling and maintenance activities." This application also cites WAC 173-20-040(2)(a) for a Shoreline Exemption when the project does not exceed \$5,000.00 so long as the development does not materially interfere with the normal public use of the water or shorelines of the state.
- 5.6 GCSMP 24.12.740(a) clearly states that an exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the Shoreline Management Act or GCSMP.
- 5.7 The Appellant argues that this project is not compliant with the SMA or GCSMP because of the nuisance, trespass and inverse condemnation issues raised.
- 5.8 While the Appellant may indeed, in the future, have some cause of action against those responsible for the sand blowing onto Appellant's property, this does not invalidate the issuance of the Shoreline Exemption.
- 5.9 The Appellant is the party that created the need for the Grant County PUD to make an application to correct the unpermitted shoreline work done by the appellant in planting a grass lawn on Grant County PUD property. The project of the Grant County PUD is to remove this grass lawn and to replace it with a planting of native grasses.

VI. A DECISION

- 6.1 The Shoreline Exemption was properly issued regarding the Grant County PUD JARPA permit application for the reasons set forth within the application as well as the Certificate of Exemption. The issuance of this Certificate of Exemption is hereby affirmed in all respects.

Dated this 29th day of February, 2016.



ANDREW L. KOTTKAMP

This decision is subject to Appeal pursuant to the Grant County Unified Development Code. Untimely Appeals will be barred.